*The Hon'ble Sri Justice V.V.S.RAO

+W.P.No.2402 of 2004

%02.11.2004

£ Gowtham Tutorial School and College, Ayyagaripeta,

Sathupalli (V&M), Khammam District, rep. by its Correspondent

B.Srinivasanaidu, S/o.late Pitchaiah.

..... PETITIONER

Vs.

$ 1 Commissioner and Director of School Education, A.P., Hyderabad.
2 District Educational Officer, Khammam.
3 Vice Chairman and Managing Director, APSRTC,

Musheerabad, Hyderabad.
4 Depot Manager, APSPRTC, Sathupally, Khammam District

.....RESPONDENTS

!For the petitioner …Mr.Kowturu Vinaya Kumar

^For Respondent Nos.1 and 2 …G.P. for School Education

For Respondent Nos.3 and 4 …Mr.K.Srinivasa Rao (Standing

Counsel for A.P.S.R.T.C.)

<Gist:

>Head Notes:

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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 2402 of 2004

Between:

Gowtham Tutorial School and College, Ayyagaripeta,

Sathupalli (V&M), Khammam District, rep. by its Correspondent

B.Srinivasanaidu, S/o.late Pitchaiah.

..... PETITIONER

AND

1 Commissioner and Director of School Education, A.P., Hyderabad.
2 District Educational Officer, Khammam.
3 Vice Chairman and Managing Director, APSRTC,

Musheerabad, Hyderabad.
4 Depot Manager, APSPRTC, Sathupally, Khammam District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ or direction preferably Writ of Mandamus declaring the proceedings issued by the 1st respondent in RC.No.526/E2-1/2003 dt:10-10-2003 rejecting the claim of the petitioner institution for issue of concessional bus-passes to its students as illegal, arbitrary, discriminatory and violative of principles of natural justice and consequently direct the respondents to issue concessional bus-passes to the students of the petitioner institution.

Counsel for the Petitioner: MR. KOWTURU VINAYA KUMAR

Counsel for Respondents 1 and 2: GOVERNMENT PLEADER FOR SCHOOL EDUCATION

Counsel for Respondents 3 and 4: MR.K SRINIVASA RAO (STANDING COUNSEL FOR A.P.S.R.T.C.)

The Court made the following:

ORDER:

Whether the students of a tutorial college are entitled to concessional bus passes? This is the question of considerable importance, which is to be resolved in this Writ Petition. Be it noted, in the State of Andhra Pradesh all the students studying upto X Class are provided free bus passes to travel in buses of Andhra Pradesh State Road Transport Corporation (APRTC) and students studying in the Government colleges and recognised private Government Colleges are provided with the facility to obtain bus passes at concessional rates, which would enable them to travel in RTC buses at such concessional rates from their residences to concerned colleges.

The petitioner is a tutorial college governed by A.P.Tutorial Institutions (Registration and Regulation) Rules, 1997 (for short, the Tutorial Institutions Rules. These Rules are promulgated by the Governor of Andhra Pradesh vide G.O.Ms.No.200, dt.6.8.1997 in exercise of powers conferred under Section 32 read with Section 99 of A.P. Education Act, 1982 (for short, the Act). The petitioner college was established by Real Educational Society which is a society registered under A.P.(Telangana Area) Public Societies Registration Act, 1350 fasli. The petitioner college approached the officials of APSRTC requesting to issue concessional bus passes to their students. Second respondent requested the Deputy Educational Officer, Madhira (DEO) to send remarks to whether the students of the petitioner tutorial college can be treated as on par with students studying in Government recognised institutions. The latter sent a report on 22.8.2003 to the effect that the students of registered tutorial school and college are treated as private candidates and that they are attending pubic examinations. Based on those remarks first respondent sent a report to third respondent on 10.10.2003 informing that students of petitioner college are not eligible for concessional bus passes. A copy thereof was marked to the Correspondent of the petitioner. Therefore petitioner filed the present Writ Petition seeking a direction to respondents to issue concessional bus passes to students of petitioner institution.

This Court admitted the Writ Petition on 11.2.2004 and by order dt.16.8.2004 made in W.P.M.P.No.3170 of 2004 passed interim orders directing the respondent to issue concessional bus passes to students of petitioner institution without reference to impugned proceedings.

Respondents 3 and 4, namely, the Vice-Chairman and Managing Director of APSRTC and the Depot Manager, APSRTC, Sathupally, Khammam District, have filed W.V.M.P.No.2602 of 2004 praying this Court to vacate the interim order. At this stage itself, the matter was heard finally with the consent of the learned counsel for the petitioner and the learned counsel for respondents 3 and 4, as well as learned Assistant Government Pleader for respondents 1 and 2.

Learned counsel for the petitioner, Sri K.Vinay Kumar, submits that the school and

college run by petitioner work from 10.00 a.m. to 4.30 p.m. that the institution follows the same syllabus prescribed by the Government of Andhra Pradesh and other educational authorities and that students of petitioner appear in all the public examinations conducted by various Government authorities and therefore there cannot be any discrimination. He would also contend that the petitioner has obtained registration under the Tutorial Institutions Rules and that petitioner institution is subjected to inspection by second respondent and his subordinates and that there is no justification in denying benefit of bus passes to students of petitioner as the tutorial institution is equivalent to recognised school or college. **Per contra**, learned Standing Counsel for APSRTC, Sri K.Srinivasa Rao, submits that as per the Circular No.84/2003-OPD (P), dt.29.10.2003 issued by APSRTC students of private unaided institutions are not eligible for concessional bus passes as courses in tutorial colleges are not offered full time basis and petitioner institution is not having affiliation to any Board or University which conducts examinations.

"Tutorial institution" is defined in clause (47) of Section 2 as under.

2(47). "Tutorial institution" means any institution started by a person or body of persons for giving coaching or instruction to fifty or more candidates or employing five or more teachers, to prepare them to appear for an examination in any branch of education conducted by any body or authority or the Universities in the State under this Act or any other law; and includes an institution where instruction in typewriting or other commercial subject is given.

The terms "educational institution, and "private institution" are defined under Section 2(18) and Section 2(35) respectively and read as under.

2(18). "Educational institution" means a recognised school, colleges including Medical College, special institution or other institution including an orphanage or boarding home or hostel attached to it by whatever name called, the management of which carries on either exclusively or among other activities, the activity of imparting education therein, and includes every premises attached thereto; but does not include a tutorial institution.

2(35). "Private institution" means an institution imparting education or training, established and administered or maintained by any body of persons, and recognised as educational institution by the Government, and includes a college, a special institution and a minority educational institution, but does not include an educational institution –

(a) established and administered or maintained by the Central Government or the State Government or any local authority;

(b) established and administered by any University established by law; or

(c) giving, providing or imparting only religious instruction, but not any other instruction.

For starting a private tutorial institution, law does not require recognition or permission, whereas for starting a private educational institution, recognition by

Government or other competent authority is required. Further, under sub-section (4) of Section 20 of the Act, no educational institution shall be established except after obtaining permission granted to such agency, and as per Section 20-A an individual cannot establish a private educational institution whereas an individual can establish a tutorial institution. A brief reference is made to some of these provisions to drive home the point that everybody at every place cannot establish a private educational institution and seek recognition or affiliation, but anybody can establish a tutorial institution at any place subject to Section 32 of the Act.

The said provision contains the procedure for regulating the functioning for starting and functioning of tutorial institution. The Tutorial Institutions Rules relied on are only in relation to certain aspects. Merely because the tutorial institution requires registration and are subjected to regulatory regime does not elevate such tutorial institution to the position of recognised private institution. In that view of the matter, the submission that the tutorial institutions are on par with recognised private educational institutions in the matter of imparting education and sending students to public examinations, cannot be accepted.

APSRTC is a Statutory Corporation established under State Transport Corporations Act, 1958. It has evolved its own procedures for fixing tariffs having regard to established business practice. As a part of their business they also evolved a system of granting concessional bus passes or free bus passes to the students. It appears, by the Circular, dt.29.10.2003 APSRTC clarified that students of private unaided tutorial institutions are not eligible for concessional bus passes. Said circular is binding on APSRTC and there cannot be any deviation from it. Further, when the petitioner approached the District Officials of the Education Department, District Educational Officer, Khammam sent report on 30.11.2002 to first respondent. By communication dt.28.6.2003 third respondent informed first respondent that APSRTC is issuing concessional bus passes to students studying in High Schools/Colleges which are recognised by Government of Andhra Pradesh or Central Government. Such issue of concessional bus passes is subject to following conditions. (1) The course offered shall be full time basis; (2) the students shall not be employees nor paid any stipend/fellowship; and (3) institution shall have affiliation to any Board or University which conducts examinations and issue certificates.

The petitioner tutorial institution does not satisfy conditions 1 and 3. In the tutorial institution the course offered is not offered on full time basis. Merely because students attend from 10.00 a.m to 4.30. p.m. is not deciding factor. For example, a student of X Class or Intermediate may join at a tutorial college for taking coaching in one or two papers and attend tutorial institution from 10.00 a.m. to 4.30 p.m. The same does not amount to attending the course on full time basis. As already mentioned, a private educational institution for the purpose of the Act means a private educational institution established by educational agency which is recognised and affiliated to a Statutory Board or Government authority. None of these is present in the case of petitioners and therefore first respondent cannot be

said to have committed any error in addressing the impugned communication to third respondent that students of petitioner institution are not eligible for concessional bus passes.

The Writ Petition, for the above reasons, fails and is accordingly dismissed without any order as to costs.

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(V.V.S.RAO, J)

2.11.2004

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Note: LR copy be marked.

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To

(One fair copy to the Hon'ble Mr.Justice V.V.S.RAO (for his Lordships kind perusal)

1 The Commissioner and Director of School Education, A.P., Hyderabad.
2 The District Educational Officer, Khammam.
3 The Vice Chairman and Managing Director, APSRTC,

Musheerabad, Hyderabad.

4 The Depot Manager, APSPRTC, Sathupally, Khammam District.

5 Two CCs to the Government Pleader for School Education,

High Court Buildings, Hyderabad (O.U.T).

6 The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

7 The Secretary, A.P.Advocates Association Library, High Court

Buildings, Hyderabad.

8 8 LR copies.

9 2 CD copies.